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HOW TO ENFORCE YOUR CONSUMER RIGHTS

§ 1. 1. Introduction

This consumer rights chapter provides general information on how you can enforce your legal rights in the marketplace. It contains the following sections:

§ 1. 2. Complain And Correct

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§ 1. 4. Complain To The Source Of The Problem

§ 1. 5. The Attorney General's Consumer Information and Mediation Service

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§ 1. 2. Complain And Correct

The seller depends on the buyer for his living; the buyer depends on the seller for goods and services. Both benefit from high standards in the marketplace. As a buyer, you play an important role in upholding these standards. The seller, after all, is in the business of satisfying your demands.

Consumer studies reveal that only approximately *one third* of dissatisfied buyers complain. Many are unwilling to complain because they feel they won't be successful. They find that complaining is demeaning and frustrating. Often, they're embarrassed to admit that they've been duped.

The best buyer strategy, of course, is to shop very carefully. However, when you do end up with unsatisfactory products or services, you not only have a right, but also a responsibility to complain. Your responsibility is threefold:

- A. To yourself — to get your money's worth,
- B. To other buyers — to prevent repeated unfair sales practices; and
- C. To the seller — to hold the seller to fair standards.

When you settle for less than your money's worth, you do no one a favor. You merely make more room in the marketplace for poor products and shoddy service.

So, when you have a problem: *complain*. But remember, there's a difference between effective complaining and simply bellyaching. The first is a serious attempt to correct a specific problem. The other is a vague and general expression of disgruntlement. Effective complaining gets results, bellyaching does not.

To effectively complain you should:

- A. Make sure you have a legitimate grievance and proof to support it — receipts, repair estimates, warranties, and other documents.
- B. Complain promptly to someone with authority to correct the problem.
- C. Explain exactly what is wrong and how you want it corrected.
- D. State your case politely; remain calm and reasonable, yet be firm and persistent.

Your chances of resolving your problem increase when you take time to plan your complaint strategy. First decide whether to complain by letter, by phone, or in person. Minor problems may be disposed of quickly and easily by phone. Others may call for a face-to-face discussion and a follow-up letter. Some problems may be best handled by letter alone. Assess the situation and choose the most appropriate strategy.

§ 1. 3. Model Consumer Complaint Letter

If you choose to complain by phone or in person, write a letter anyway. Outline the steps you plan to take to correct your problem. This exercise will clarify the problem and enable you to explain it to someone else in an orderly and reasonable manner. It may also help you vent steam and prevent you from blowing your top later. Here's an example of a properly constructed complaint letter:

<p style="text-align: right;">Date _____</p> <p>Seller's Name _____ Seller's Address _____</p> <p>Dear (Seller): _____</p> <p>I bought a (<i>brand name</i>) color television set, model #____, serial #____ from your Pleasant Avenue store on May 21, ____.</p> <p>Reception was poor from the start. On June 1, your repairer, (repairer's name), came to my home to try to adjust the set. While she improved focus and color slightly, the image remains blurry. I am left with an unclear picture and a \$20 service charge.</p> <p>Since my warranty clearly covers the cost of all parts and services for one year after purchase, the bill apparently was sent in error.</p> <p>I ask for two things:</p> <ol style="list-style-type: none"> 1) that you confirm in writing that I owe nothing for the June 1 house call. 2) that you either fix the set without charge or replace it with another TV of the same model. <p>I enclose copies of the sales receipts, warranty, and June 1 bill.</p> <p>I hope you will give this matter your prompt attention. Please reply to my letter no later than _____. Thank you.</p> <p>Sincerely,</p> <p>Your name _____ Your address _____ Your telephone number _____</p>	<p>Describe the item or service you are complaining about completely and accurately.</p> <p>Be specific about the place and date of purchase.</p> <p>State your complaint.</p> <p>Ask for what you want.</p> <p>Enclose COPIES (not originals) of pertinent documents.</p> <p>Give deadlines for response: (e.g., 10 business days) or use the specific date by which you want a reply (e.g. "no later than August 5, 20__").</p>
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§ 1. 4. Complain To The Source

Of The Problem

Once you have figured how best to express your complaint and how you want it corrected, go directly to the source of the problem. Most likely, you will be able to resolve it right there. Begin by assuming you will. Don't rant and rave. On the telephone, in a letter or face-to-face, be firm, but pleasant. Use this eight-point complaint system:

- A. Identify yourself and explain your problem clearly and concisely. If you're complaining by letter, you'll increase your chances of receiving prompt attention if you limit your letter to **one or two** typed or clearly written pages.
- B. Have receipts and all pertinent documents available for review. If you're complaining by letter, enclose **copies** of these documents. Save the originals **and keep a copy of the letter**.
- C. Send your complaint letter by *certified mail, with return receipt requested*, for proof that it was received. If you're mailing copies of the letter to consumer groups or government agencies, list their names at the letter's end so the company will know that they've been contacted. These copies may be sent by regular mail.
- D. Keep a record of the **name and title** of everyone you talk to and the date the conversation took place.
- E. Give the person hearing your complaint a fair chance to respond. Listen attentively and ask for clarification of anything you don't understand. If you're complaining by letter, allow adequate time for response. Remember to specify the **actual date** you want to hear from the company (e.g., "Please respond no later than June 15, ____."). This way you'll know when the business is ignoring you. Ten days to 2 weeks is a reasonable amount of time to allow for a response.
- F. Stand firm. Don't accept a solution you feel is inadequate.
- G. Promptly confirm any agreement by letter. Insist that all promises be put in writing.
- H. If you think your legal rights have been violated (e.g., you were sold a defective good), you might want to copy the relevant chapter from this *Guide* and send it to the business.

Often you won't have to take your problem any further than the store where you did business. Most merchants rely on repeat business. They want to maintain a good reputation with their customers. When you complain about a product or service, they're likely to look on the complaint as an opportunity to leave you with a good impression.

There will be times, however, when you'll have to climb up the next rung of the complaint ladder and talk with the regional manager or manufacturer. Most of the merchandise sold here is manufactured outside the state. Also, many Maine retailers are part of a large chain with out-of-state headquarters. Often a complaint letter sent to the manufacturer of a product or to the regional or main office of a chain store will get results when a complaint made at the local store goes nowhere. If the local manager can't or won't refer you to the main office, you can contact the state government agency that registers corporations and other legal entities. All Maine corporations must be registered with the Secretary of State (207-626-8400; www.maine.gov/sos/cec/corp/). This agency can tell you the name and address of a corporation's principal office, and its registered agent. You should also be able to obtain information on an out-of-state corporation doing business here as it's required to file an application with the Secretary of State before transacting business in the state. Send your complaint to the person listed as the corporation's registered agent, and be sure to keep a copy.

§ 1. 5. The Attorney General's Consumer Information and Mediation Service

A. Who Can Use The Attorney General's Consumer Mediation Service?

If complaining directly to the business is unsuccessful, contact the Attorney General's Consumer Mediation Service in the Consumer Protection Division. We offer a *free* mediation service available to Maine consumers who have a complaint about a business. Businesses can also ask for our help in resolving a consumer complaint, but we don't mediate complaints that are just between businesses. The Consumer Protection Division monitors consumer complaints to determine whether consumers are having similar problems with a particular business. This information helps the Attorney General decide whether to investigate or bring an enforcement action against a business to protect Maine consumers from unfair and deceptive business practices.

B. What Is Complaint Mediation?

Complaint mediation is a non-confrontational way to settle a dispute between two parties who agree to work with a third person, or "mediator," to solve a problem. It is a simple and informal process in which the mediator communicates with the parties by phone or letter to understand the facts, to present each side's position, and then to try to find a mutually acceptable agreement, often through compromise. Mediation is a proven method of quickly settling disputes without the stress or expense of going to court. If the parties can't settle a dispute through mediation, court may still be an option to consider.

C. How Does Our Consumer Mediation Service Work?

Your written complaint is reviewed to determine if it can be mediated. If it can, a copy is forwarded to the business for its response, and you're notified by letter that we've started the mediation process. One of our trained *volunteer* mediators (not a State employee) is then assigned to your case. There are no in-person meetings. The mediator will use letters or phone calls to determine the facts before working with you and the business to try to reach an agreement. Mediation is strictly voluntary, and depends on the good faith of both parties who are willing to try to resolve a dispute. It doesn't always work. Sometimes a consumer complaint is closed without mediation because the business refused to participate; and sometimes a complaint is closed because mediation failed to resolve the dispute. However, over the 5 years ending in 2012, the Consumer Mediation Service successfully mediated over 59% of all complaints that were accepted for mediation, which should encourage consumers to contact us if they have a complaint against a business that they haven't been able to resolve themselves.

D. How Do I Start The Mediation Process?

Sometimes problems are the result of simple mistakes or innocent misunderstandings. We urge you to first discuss your problem with the business yourself. If this attempt at resolution fails, then it's time to try mediation. To start the mediation process, fill out a Consumer Complaint Petition, available from the Consumer Mediation Service (6 State House Station, Augusta, ME 04333-0006, 1-800-436-2131 or 207-626-8849).

E. For More Information, Contact:

Office of the Attorney General
Consumer Protection Division
Consumer Information and Mediation Service
6 State House Station
Augusta, ME 04333-0006
Phone: 1-800-436-2131 or 207-626-8849
Fax: 207-626-8812
E-mail: consumer.mediation@maine.gov

§ 1. 6. Low Cost Legal Services

If your complaint or mediation efforts aren't successful, you may want to explore your legal options. Here are some to consider:

A. Small Claims Court

Small Claims Court is a “people’s court” because the procedure are simple and informal, and you don’t need a lawyer. Costs are also minimal. *See* 14 M.R.S. §§ 7481-7487.

You can use Small Claims Court for two purposes: (1) to recover financial “damages” ***if you are not claiming more than \$6,000***, exclusive of interest and costs, and (2) to obtain certain types of “equitable relief” — an order from the court to the defendant (the person you are suing) to “return, reform, refund, repair or rescind.” For example, the court might order the defendant to properly repair a TV set. Small Claims Court also provides a mediation service.

For more information about Small Claims Court, go to the website at www.courts.state.me.us/maine_courts/small_claims/smallclaimsguide/SmClms040312.pdf.

B. Private Legal Help

Sometimes the nature of your consumer problem will require hiring a lawyer. Finding a lawyer and paying for his or her services can be difficult, but here are some suggestions:

(1) Ask Your Friends

Ask your friends or someone you know and trust to provide you with the names of lawyers they have used and whom they know do good work. You should also check advertisements in newspapers and Yellow Pages.

(2) Lawyer Referral & Information Service

The Maine Bar Association sponsors the Lawyer Referral & Information Service. For a \$25 fee, you receive a 30-minute consultation with a lawyer who practices in that area of the law to determine if you have a case worth pursuing. The Service can be contacted through its website at www.mainebar.org/lawyer_need.asp, or by calling its office in Augusta at 207-622-1460 or 1-800-860-1460.

(3) *Pine Tree Legal Assistance*

Pine Tree Legal Assistance provides free legal service to low-income individuals who have non-criminal cases in a number of different areas, including government benefits, landlord-tenant, foreclosure and predatory lending, and certain types of consumer problems. To determine if you are eligible for legal help from Pine Tree, and whether they handle your type of case, go to its website at www.ptla.org, or contact your nearest neighborhood Pine Tree office in: Augusta (207-622-4731); Bangor (207-942-8241); Lewiston (207-784-1558); Machias (207-255-8656); Portland (207-774-8211); or Presque Isle (207-764-4349).

(4) *Legal Services For the Elderly*

Legal Services For the Elderly (<http://mainelse.org>) handles miscellaneous cases at no charge for people over 60 years old. It serves people through the state and has offices in Augusta, Presque Isle, Bangor, Lewiston and Scarborough. You can contact Legal Services For the Elderly's Helpline at 1-800-750-5353.

(5) *Volunteer Lawyers Project*

All lawyers are under a general ethical obligation to provide a certain amount of free legal work to those who are unable to pay. The Volunteer Lawyers Project (www.vlp.org) finds lawyers for low-income Maine citizens who need help with civil (non-criminal) legal problems. To see if you qualify for assistance, call 1-800-422-4293 or, in the Portland area, 207-774-4348.

(6) *Cumberland Legal Aid Clinic*

The Cumberland Legal Aid Clinic in Portland is a program of the University of Maine School of Law that is staffed by third-year law students under attorney/professor supervision. The Clinic provides legal services to low-income people for most kinds of civil, criminal, juvenile and family law matters in Southern Maine courts. You can contact the Clinic by calling 207-780-4370 or 1-877-780-2522.